

## HOUSE BILL NO. 628

INTRODUCED BY M. WOLERY, NELSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION  
5 IN AGRICULTURAL SEED CONTRACT DISPUTES BEFORE INSTITUTING LEGAL ACTION; EXEMPTING  
6 SEED POTATOES FROM THE ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION REQUIREMENT;  
7 PROVIDING FOR A NOTICE OF ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION REQUIREMENT;  
8 PROVIDING FOR A ~~MEDIATION~~ AN ALTERNATIVE DISPUTE RESOLUTION COUNCIL; ESTABLISHING THE  
9 AUTHORITY OF THE ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION COUNCIL; PROVIDING THE  
10 PROCEDURE FOR ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION IN AGRICULTURAL SEED  
11 CONTRACT DISPUTES; DESCRIBING WHAT MUST BE INCLUDED IN THE ~~MEDIATION~~ ALTERNATIVE  
12 DISPUTE RESOLUTION FINDINGS; PROVIDING FOR THE ASSESSMENT OF THE COSTS OF ~~MEDIATION~~  
13 ALTERNATIVE DISPUTE RESOLUTION; OUTLINING PROGRAM ADMINISTRATION FOR THE  
14 AGRICULTURAL SEED CONTRACT ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION PROGRAM;  
15 PROVIDING FOR A STATUTORY APPROPRIATION; AND AMENDING ~~SECTION~~ SECTIONS 17-7-502 AND  
16 80-5-123, MCA; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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20 NEW SECTION. **Section 1. Requirement and effect of ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION**  
21 **-- exemption.** (1) As a prerequisite to a buyer's rights to maintain legal action against a dealer or any other  
22 seller of agricultural seed for a claim as provided in subsection (2), the buyer shall submit the claim to  
23 ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION as provided in [section 6] and this section.

24 (2) A buyer may claim to have been damaged by the failure of agricultural seed to produce or  
25 perform:

- 26 (a) as represented by the label that is required to be attached pursuant to 80-5-123;  
27 (b) as represented by the bulk certificate if the agricultural seed was purchased in bulk;  
28 (c) by warranty; or  
29 (d) as a result of negligence.

30 (3) Any applicable period of limitations with respect to the claim must be tolled until 10 days after

1 the filing of the report of ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION with the director of the department as  
2 provided in [section 6].

3 (4) (a) A claim may not be asserted as a counterclaim or defense in any action brought by a seller  
4 against a buyer until the buyer has submitted a claim to ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION as  
5 provided in [section 6] and this section.

6 (b) When the buyer files a written notice of intention to assert a claim as a counterclaim or  
7 defense in the action and the notice is accompanied by a copy of the buyer's complaint in ~~mediation~~  
8 ALTERNATIVE DISPUTE RESOLUTION filed under [section 6], the action must be stayed and any applicable statute  
9 of limitations must be suspended with respect to the claim asserted as a counterclaim or defense until 10  
10 days after the filing of the report of ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION with the director of the  
11 department as provided in [section 6].

12 (5) To be eligible for resolution under the ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION process, a  
13 complaint must allege damages in excess of the amount established in 25-35-502 for jurisdiction in small  
14 claims court.

15 (6) [Sections 1 through 10] do not apply to seed potatoes.

16

17 NEW SECTION. Section 2. Notice of ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION. A notice calling  
18 attention to the requirement for ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION under [section 1] must be  
19 included on the label required under 80-5-123, on the bulk certificate, or otherwise attached to or printed  
20 on the agricultural seed bag or package. ~~Mediation~~ ALTERNATIVE DISPUTE RESOLUTION may not be required  
21 unless this notice is included. A notice in the following form or equivalent language is sufficient:

22 NOTICE

23 ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION REQUIRED BY STATE LAW

24 Under Montana agricultural seed laws, ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION is required as a  
25 prerequisite to maintaining a legal action based upon the failure of the agricultural seed to which this notice  
26 is attached to produce as represented. The consumer shall file a complaint along with the filing fee, when  
27 applicable, with the Director of the Department of Agriculture allowing sufficient time to permit inspection  
28 of the crops, plants, or trees by the designated agency and the seller from whom the agricultural seed was  
29 purchased. A copy of the complaint must be sent to the seller by certified mail or as otherwise provided  
30 by state law.

1  
2        **NEW SECTION. Section 3. Commencement of legal action -- evidence.** (1) The buyer or the seller  
3 may commence legal proceedings against the other party or assert a claim as a counterclaim or defense  
4 in an action brought by the seller or buyers after the receipt of the report of ~~mediation~~ ALTERNATIVE DISPUTE  
5 RESOLUTION as provided in [section 7].

6        (2) In litigation involving a complaint that has been subject to ~~mediation~~ ALTERNATIVE DISPUTE  
7 RESOLUTION under [sections 1 through 10], a party may introduce the report of ~~mediation~~ ALTERNATIVE  
8 DISPUTE RESOLUTION as evidence of the facts found in the report. The court may give weight to the  
9 ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION council's findings and conclusions of law and recommendations  
10 regarding damages and costs. The court may also take into account any findings of the council with  
11 respect to the failure of a party to cooperate in the ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION proceedings,  
12 including findings regarding the effect that a delay in filing the ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION  
13 claim may have had upon the council's ability to determine the facts of the case.

14  
15        **NEW SECTION. Section 4. ~~Mediation~~ ALTERNATIVE DISPUTE RESOLUTION council.** (1) The purpose  
16 of the ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION council is to conduct ~~mediation~~ ALTERNATIVE DISPUTE  
17 RESOLUTION as provided in [sections 1 through 10] ON AN AS-NEEDED BASIS WHEN A ~~MEDIATION~~ AN ALTERNATIVE  
18 DISPUTE RESOLUTION COMPLAINT HAS BEEN FILED. The council must be called into session by the director of the  
19 department or the council presiding officer to consider matters referred to the council by the director or  
20 the presiding officer.

21        (2) The director shall appoint ~~a mediation~~ AN ALTERNATIVE DISPUTE RESOLUTION council, UPON THE  
22 RECEIPT OF A ~~MEDIATION~~ AN ALTERNATIVE DISPUTE RESOLUTION COMPLAINT, composed of five members and five  
23 alternate members. TWO OF THE FIVE APPOINTED MEMBERS OF THE ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION  
24 COUNCIL MUST BE MONTANA PRODUCTION GROWERS. One member and one alternate member must be appointed  
25 upon the recommendation of each of the following:

- 26        (a) vice provost and director, Montana state university extension service;  
27        (b) director, Montana state university agricultural experiment station;  
28        (c) president, Montana seed trade association;  
29        (d) president, Montana seed growers association; and  
30        (e) director, Montana department of agriculture.

(3) An alternate member may only serve in the absence of the member for whom the person is an alternate.

(4) The council shall elect a presiding officer and a secretary from its membership. The presiding officer conducts meetings and deliberations of the council and directs all of its activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as directed by the presiding officer.

**NEW SECTION. Section 5. Authority of ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION council -- compensation.** (1) The ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION council or its members may:

(a) examine the buyer and the seller on all matters that the council considers relevant;

(b) grow a representative sample of the agricultural seed to production stage under the director's supervision through the facilities of the department or a designated university;

(c) hold informal hearings at the time and place directed by the council presiding officer, provided that reasonable notice was given to all parties; and

(d) delegate all or any part of an investigation to one or more of the council members.

(2) The members of the council may not receive compensation for the performance of their duties with respect to [sections 1 through 10], except for reimbursement for travel expenses and per diem.

**NEW SECTION. Section 6. ~~Mediation~~ ALTERNATIVE DISPUTE RESOLUTION procedure.** (1) A buyer may institute ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION by filing a sworn complaint and a \$250 filing fee with the director of the department. The buyer shall serve a copy of the complaint on the seller by certified mail OR AS OTHERWISE PROVIDED IN STATE LAW. Except in a case of agricultural seed that has not been planted, the claim must be filed allowing sufficient time to permit effective inspection of the plants under field conditions.

(2) Within ~~45~~ 21 days after receipt of a copy of the complaint, the seller shall:

(a) file an answer to the complaint with the director;

(b) submit a \$250 filing fee to the department; and

(c) serve a copy of the answer on the buyer by certified mail OR AS OTHERWISE PROVIDED IN STATE LAW.

(3) The director shall refer the complaint and answer to the ~~mediation~~ ALTERNATIVE DISPUTE

1 RESOLUTION council for investigation, findings, and recommendations within 30 days of receiving the  
2 answer.

3 (4) When a complaint is referred to the council for investigation, the council shall make an  
4 investigation of the matters contained in the complaint and file a report of its findings and  
5 recommendations with the director within 60 days of receiving the referral, unless the parties subject to  
6 the ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION agree to a later date.

7  
8 NEW SECTION. Section 7. Findings. (1) The report of the ~~mediation~~ ALTERNATIVE DISPUTE  
9 RESOLUTION council must:

10 (a) include findings of fact and recommendations regarding costs, if any; and  
11 (b) consider the written summary provided when an investigation is delegated as provided in  
12 [section 5].

13 (2) The director shall send copies of the completed report to the buyer and seller by certified mail.

14  
15 NEW SECTION. Section 8. Costs of ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION. Costs of ~~mediation~~  
16 ALTERNATIVE DISPUTE RESOLUTION that exceed the amount paid in filing fees must be assessed to the  
17 nonprevailing party or equally distributed between the parties to the extent that the parties have agreed  
18 in writing to the equal distribution.

19  
20 NEW SECTION. Section 9. Program administration and rulemaking. (1) The agricultural seed  
21 contract ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION program must be administered by the department.

22 (2) The department may adopt rules that are necessary for the efficient administration of [sections  
23 1 through 10]. The rules may include but are not limited to:

24 (a) the content and format of the buyer's claim to ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION and  
25 the seller's answer;

26 (b) procedures for conducting investigations; and

27 (c) a procedure for assessing costs of ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION to the parties;.

28 AND

29 (D) TYPES OF SEED THAT ARE EXEMPTED FROM THE REQUIREMENTS OF [SECTIONS 1 THROUGH 10].

30

1        NEW SECTION. **Section 10. Administration of fees.** Filing fees and reimbursed costs must be  
2 deposited in the seed account established in 80-5-132 for the purpose of funding costs of investigation  
3 and ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION. Funds deposited under this section are statutorily  
4 appropriated, as provided in 17-7-502, to pay actual expenses incurred by the department to administer  
5 the ~~mediation~~ ALTERNATIVE DISPUTE RESOLUTION program provided for in [sections 1 through 10].  
6

7        **Section 11.** Section 17-7-502, MCA, is amended to read:

8        **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
9 appropriation is an appropriation made by permanent law that authorizes spending by a state agency  
10 without the need for a biennial legislative appropriation or budget amendment.

11        (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply  
12 with both of the following provisions:

13        (a) The law containing the statutory authority must be listed in subsection (3).

14        (b) The law or portion of the law making a statutory appropriation must specifically state that a  
15 statutory appropriation is made as provided in this section.

16        (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901;  
17 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702;  
18 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404;  
19 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319;  
20 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107;  
21 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301;  
22 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703;  
23 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416;  
24 [section 10]; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

25        (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
26 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
27 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of  
28 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as  
29 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the  
30 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to

1 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for  
2 supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1,  
3 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of  
4 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability  
5 is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1,  
6 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710  
7 terminates June 30, 2005.)"

8  
9 **SECTION 12. SECTION 80-5-123, MCA, IS AMENDED TO READ:**

10 **"80-5-123. Label requirements for agricultural, vegetable, flower, and indigenous seeds.** (1) Each  
11 container of agricultural, vegetable, flower, and indigenous seeds sold in this state for sowing purposes  
12 must bear a conspicuous, unaltered label or tag, plainly written or printed in English. Bulk sales must be  
13 accompanied by the required label information, which must be given to the seed purchaser. The following  
14 information, which may not be modified or denied in the labeling or on another label attached to the  
15 container, must be included on a label:

- 16 (a) name and address of the seed labeler;  
17 (b) lot number identification;  
18 (c) germination rate and date of germination test or a notation of the year for which the seed was  
19 packaged for sale;  
20 (d) state or country of origin; ~~and~~  
21 (e) notice calling attention to the requirement for mediation ALTERNATIVE DISPUTE RESOLUTION under  
22 [section 1]; and

23 (f) seed kind or variety. The department shall establish rules specifying the kinds of seed for which  
24 variety must be stated and the kinds of seeds for which the variety may be stated and when the words  
25 "variety not stated" may be used. Kinds of seeds not listed by department rule may be stated as kind only  
26 or as kind and variety.

27 (2) In addition to the required label information listed in subsection (1), the department shall  
28 establish by rule additional label requirements for agricultural seed, including grass, lawn, and turf seed,  
29 and for vegetable, flower, and indigenous seeds. The additional label requirements may include:

- 30 (a) percentage of kind or variety of each seed component present in a container;

1 (b) percentage of weed seed present, both restricted and common weed seed;  
2 (c) amount of inert material present;  
3 (d) warnings for treated seed; and  
4 (e) requirements for coated seed, inoculated seed, seed that is below standard, seed sold in bulk,  
5 hybrid seed, seed mixtures, and seed in containers, mats, tapes, and other planting devices."

6  
7 NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 10] are intended to be  
8 codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to  
9 [sections 1 through 10].

10  
11 NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that  
12 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
13 act].

14  
15 ~~NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.~~

16 - END -